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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re

**SEARS HOLDINGS CORPORATION, et al.,

Debtors.**

Chapter 11

**Case No. 18-23538 (RDD)

(Jointly Administered)**

**LIMITED OBJECTION OF GROUPBY USA, INC., TO SUPPLEMENTAL NOTICE
OF CURE COSTS AND POTENTIAL ASSUMPTION AND ASSIGNMENT OF
EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN
CONNECTION WITH GLOBAL SALE TRANSACTION**

GroupBy USA, Inc. (“GroupBy”) hereby files this *Limited Objection of GroupBy USA, Inc., to Supplemental Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction* (the “Objection”) to the alleged cure amount set forth in the *Supplemental Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction* [Docket No. 1774] (the “Cure Notice”) served upon GroupBy by the Debtors, and in support thereof represents as follows:

1. On October 15, 2018 (the “Petition Date”), Sears Holdings Corporation, together with various of its affiliates (collectively, the “Debtors”), filed voluntary petitions for relief

under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United State Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”).

2. GroupBy has provided and continues to provide software and related services to the Debtors, including but not limited to Sears Holdings Management Corporation (“SHMC”). GroupBy provides SHMC with hosted third-party services, ecommerce and related services pursuant to a written Software-as-a-Service (SaaS) Agreement between the parties dated December 31, 2017 (the “Agreement”).

3. On January 23, 2019, the Debtors filed their Cure Notice, including the amounts the Debtors believed were required to cure all defaults then existing under such contracts to be assumed (the “Cure Amounts”).

4. The Debtors indicated in the Cure Notice that they intend to assume the Agreement with GroupBy.

5. Pursuant to the Cure Notice, the Debtors identified \$0.00 as the amount which they allege to be owing to GroupBy under the Agreement.

6. While GroupBy agrees to the proposed assumption of the Agreement with the Debtors, GroupBy disputes the proposed Cure Amount. In accordance with the terms of the Agreement, GroupBy has submitted its invoice dated January 1, 2019, to SHMC in the amount of \$840,000.00, which amount remains unpaid and is currently due and owing. Accordingly, the proposed Cure Amount is less than what is presently owed under the Agreement.

7. Pursuant to section 365(b)(1)(A) of the Bankruptcy Code, the Debtors must cure any defaults under the Agreement in connection with any proposed assumption. The Debtor’s proposed Cure Amount of \$0.00 fails to cure the existing amounts due under the Agreement with GroupBy.

8. The Cure Amount necessary to assume the Agreement is currently \$840,000.00. Accordingly, the Debtors must provide for payment in full of the outstanding amount of \$840,000 in order to satisfy the terms of section 365(b)(1)(A) of the Bankruptcy Code to assume the Agreement.

WHEREFORE, for all the foregoing reasons, GroupBy requests that this Court enter an order:

- a. sustaining this Objection;
- b. establishing the Cure Amount due to GroupBy in the amount of \$840,000.00;
- c. ordering and directing that GroupBy be paid \$840,000.00 in connection with and as a condition of the assumption of the Agreement;
- d. granting GroupBy such other and further relief as deemed just and necessary.

Dated: January 31, 2019

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